

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

**ROBERT W. PATE and SANDRA L. PATE §
§
VS. §
§
THE BISHOP'S LODGE RESORT AND §
SPA, BISHOP'S LODGE I, LLC, BISHOP'S §
LODGE RESORT COMMUNITIES, §
LLC, BISHOP'S LODGE-VEF II §
OPERATOR, INC., VALUE §
ENHANCEMENT FUND II, LLC, §
AREA PROPERTY PARTNERS, LP §**

CIVIL ACTION NO. _____

JURY DEMANDED

DEFENDANTS' JOINT NOTICE OF REMOVAL

Defendants, Bishop's Lodge Resort Communities, LLC, Bishop's Lodge-VEF II Operator, Inc., Value Enhancement Fund II, LLC, Area Property Partners, LP (collectively "Defendants") file this Joint Notice of Removal pursuant to 28 U.S.C. §1446(a).

A.

INTRODUCTION

1. This is a suit among citizens of different states. Plaintiffs are Robert W. Pate and Sandra L. Pate, who allege they are residents of Jefferson County, Texas.
2. Defendants are The Bishop's Lodge Resort and Spa, Bishop's Lodge I, LLC, Bishop's Lodge Resort Communities, LLC, Bishop's Lodge-VEF II Operator, Inc., Value Enhancement Fund II, LLC, and Area Property Partners, LP. There are no other defendants.
3. The following defendants have been served through the Texas Secretary of State: Bishop's Lodge Resort Communities, LLC, Value Enhancement Fund II, LLC, and Area Property Partners, LP.

4. To the best of Defendants' knowledge, The Bishop's Lodge Resort and Spa has not been served; its principal place of business is located in Santa Fe, New Mexico. The Bishop's Lodge Resort and Spa is not registered to do business in the state of Texas nor does it maintain its principal place of business in Texas.

5. To the best of Defendants' knowledge, Bishop's Lodge I, LLC has not been served; it is not a valid, existing entity.

6. Bishop's Lodge Resort Communities, LLC is a Delaware limited liability company and is not registered to do business in the state of Texas nor does it maintain its principal place of business in Texas.

7. To the best of Defendants' knowledge, Bishop's Lodge-VEF II Operator, Inc. has not been served; it is a Delaware Corporation. Bishop's Lodge-VEF II Operator, Inc. is not registered to do business in the state of Texas nor does it maintain its principal place of business in Texas.

8. Value Enhancement Fund II, LLC is a Georgia limited liability company and is not registered to do business in the state of Texas nor does it maintain its principal place of business in Texas.

9. Robert Pate alleges that he was injured when he stepped through a storm drain while he was a guest at the Bishop's Lodge Resort and Spa located at 1297 Bishop's Lodge Road, Santa Fe, New Mexico. Robert Pate contends that Defendants' negligently maintained premises resulted in Robert Pate's injuries. Plaintiff sued Defendants in state court in Cause No. *D-0194714, Robert W. Pate and Sanda L. Pate v. The Bishop's Lodge Resort and Spa, Bishop's Lodge I, LLC, Bishop's Lodge Resort Communities, LLC, Bishop's Lodge-VEF II Operator, Inc., Value Enhancement Fund II, LLC, Area Property Partners, LP*, In the 136th District Court of

Jefferson County, Texas. In Plaintiffs' Original Petition (attached here), plaintiffs seek the following elements of damages:

- Past, present and future physical pain and suffering;
- Past, present and future mental anguish;
- Past, present and future impairment and disfigurement;
- Past, present and future disability;
- Loss of income and loss of earning capacity;
- Past, present and future medical expenses;
- Past, present and future consequential damages;
- Punitive damages;
- Court costs;
- Loss of consortium;
- Prejudgment and post-judgment interest; and
- Attorneys' fees.

10. Plaintiffs commenced their state court action on September 6, 2013, but secured service on Defendants through the Texas Secretary of State on September 12, 2013. Removal of this action is brought within 30 days after service of notice on Defendants and is timely filed under 28 U.S.C. §1446(b).

B.

BASIS FOR REMOVAL

11. Removal is proper on diversity grounds under 28 U.S.C. § 1332. The parties are citizens of different states. Although Plaintiff's Original Petition does not expressly allege an amount in controversy, it is factually apparent that the amount in controversy exceeds \$75,000.00. Where a plaintiff seeks damages for medical expenses, physical pain and suffering, mental anguish and suffering, lost of consortium, loss of wages and earning capacity, disability and disfigurement, and putative damages, such allegations support a monetary basis sufficient to confer removal jurisdiction. *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d. 880, 883 (5th Cir. 2000).

12. All properly served Defendants join in this Notice of Removal and all consent to the removal of this case to Federal Court. *Balazik v. County of Dauphin*, 44 F.3d 209, 213 (3d Cir. 1995); see 28 U.S.C. § 1446(A).

13. Attached here as Exhibit A, per local rule, is an index of the pleadings filed in the State Court.

14. Attached here as Exhibit B, per 28 U.S.C. §1446(a), are copies of all pleadings, process, orders, and other filings in the Texas State Court action.

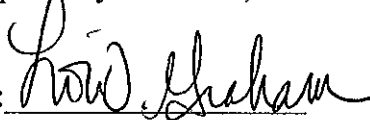
15. The Notice of Removal is appropriate in this venue under 28 U.S.C. §1441(a) because the State Court where the action was filed is located in Beaumont. However, venue is not proper in the Eastern District of Texas and a Motion to Transfer Venue is forthcoming.

16. Defendants will promptly file a copy of this notice of removal with the Clerk of the 136th District Court of Jefferson County, Texas, where this action was initially filed and where it has been pending.

17. Defendants demand a jury trial.

18. For these reasons stated, Defendants ask the Court to remove this action to the United States District Court for the Eastern District of Texas, Beaumont Division on this 14th day of October 2013.

Respectfully submitted,

By: 

Lori V. Graham

State Bar No. 24051472

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BISHOP'S LODGE-VEF II
OPERATOR, INC., VALUE
ENHANCEMENT FUND II, LLC, AREA
PROPERTY PARTNERS, LP.**

Of Counsel:

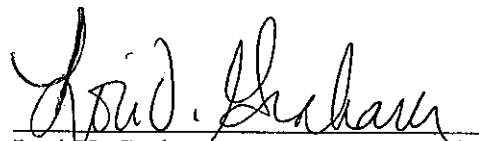
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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing **Defendant's Notice Of Removal** was served on the following counsel of record by electronic filing, certified U.S. mail, return receipt requested, and also by fax on this 14th day of October 2013.

Casey Hargroder
2905 Toccoa Street
Beaumont, Texas 77703

via facsimile: 409/838-0167


Lori V. Graham